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6 THE DOW CHEMICAL COMPANY,
7 ROHM AND HAAS COMPANY, and
8 MORTON INTERNATIONAL, INC.

9 **STATE OF CALIFORNIA**

10 **STATE WATER RESOURCES CONTROL BOARD**

11 In the Matter of Los Angeles Regional Water
12 Quality Control Board 13267 Order – Dow
13 Chemical Company (Former Bee Chemical
14 Company Facility), 1500 W. 178th Street, Gardena,
15 California

No.

**PETITION FOR REVIEW AND
REQUEST FOR HEARING**

**[REQUEST TO HOLD IN ABEYANCE
PENDING FURTHER NOTIFICATION]**

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19 Pursuant to Water Code section 13320(a) and California Code of Regulations, title 23,
20 section 2050 *et seq.*, Dow Chemical Company, Rohm and Haas Company, and Morton International,
21 Inc. (collectively, the “Petitioners”) respectfully petition the State Water Resources Control Board
22 (“State Board”) for review of a Water Code section 13267 Order (the “Order”), dated August 24,
23 2009 and issued by the Executive Officer of the Los Angeles Regional Water Quality Control Board
24 (“Regional Board”) with regard to the former Bee Chemical Company facility, located at 1500 W.
25 178th Street, Gardena, California (the “Site”). A copy of the Order is attached hereto as Exhibit A.

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1 **I. Name and Address of Petitioners**

2 Petitioners may be contacted through counsel of record: Peter A. Nyquist, Alston & Bird,
3 LLP, 333 S. Hope Street, 16th Floor, Los Angeles, California 90071; (213) 576-1142;
4 pete.nyquist@alston.com.

5 **II. Specific Action or Inaction for Which This Petition for Review is Sought**

6 The Regional Board action for which this petition for review is filed concerns the issuance
7 of the Order, entitled "Requirement to Provide Technical Reports for Soil, Soil Vapor and
8 Groundwater Assessment and for Groundwater Monitoring Pursuant to Water Code section 13267
9 Order – Former Bee Chemical Company Facility, 1500 W. 178th Street, Gardena, CA (Site Cleanup
10 Program No. 0550, Site ID No. 1843600)," dated August 24, 2009.

11 **III. Date the Regional Board Acted or Failed to Act**

12 The date of the Regional Board's action which is subject to review is August 24, 2009, the
13 date the Order was signed by the Executive Officer of the Regional Board.

14 **IV. Statement of Reasons the Action is Inappropriate and Improper**

15 This issuance of the Order was beyond the authority of the Regional Board, inappropriate,
16 improper, or not supported by the record, for the following reasons:

17 A. The Order includes findings of fact and conclusions that are not supported by
18 substantial evidence in the record.

19 B. The Order is vague, including its failure to provide legally sufficient grounds
20 for requiring Petitioners to engage in additional investigative activities, complete and submit reports
21 and plans, and conduct groundwater monitoring and sampling pursuant to the Order.

22 C. The Order fails to identify or name additional dischargers or parties otherwise
23 responsible for investigating and/or cleaning up the alleged contamination referenced therein.

24 D. The Order is unreasonable and violates the common law principle of laches
25 based on the Regional Board's failure to act in a reasonable, diligent, or timely manner, resulting in
26 substantial prejudice and harm to Petitioners.

27 E. The costs of the directives that the Order imposes on the Petitioners are not
28 reasonably related to the need for, or benefits from, the directives.

1 F. The Regional Board failed to provide Petitioners with a meaningful
2 opportunity to introduce evidence to refute the Order's alleged factual findings. As such, Petitioners
3 have been denied their rights to procedural due process, resulting in substantial harm through the
4 imposition of unjustified and inappropriate regulatory requirements and the potential for imposition
5 of civil liability penalties for failure to comply with the Order.

6 V. **Petitioners are Aggrieved**

7 Petitioners are aggrieved for the reasons set forth in section IV., above. Additionally,
8 Petitioners will be forced to incur substantial investigative, monitoring and other costs, without
9 adequate cause or justification.

10 VI. **Petitioners' Requested Action by the State Board and Request To Hold**
11 **Petition in Abeyance**

12 Petitioners respectfully request a hearing to address the issues presented herein, that the State
13 Board determine the Regional Board's action in issuing the Order was inappropriate and improper,
14 and vacate the Order pursuant to this petition and in accordance with applicable law.

15 At this time, Petitioners request that the State Board hold in abeyance this petition for review
16 and request for hearing pending further discussions between Petitioners and the Regional Board.
17 Petitioners will notify the State Board if they intend to activate this petition.

18 Petitioners reserve the right to amend this petition and submit a detailed statement of points
19 and authorities in the event this petition is converted to active status.

20 VII. **Statement of Points and Authorities**

21 Petitioners reserve the right to and shall submit a detailed statement of points and authorities
22 in the event this petition for review is activated.

23 VIII. **Statement of Transmittal of Petition to the Regional Board**

24 A true and correct copy of this petition for review was transmitted to Tracy Egoscue,
25 Executive Officer of the Regional Board, on September 23, 2009.

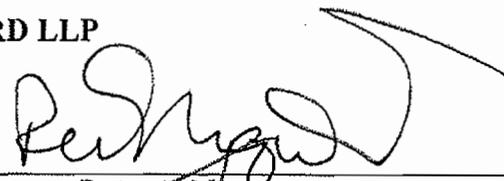
26 IX. **Substantive Issues Raised Before the Regional Board**

27 Petitioners have not been afforded a meaningful opportunity to be heard on the substantive
28 issues set forth in the Order. Pending ongoing efforts to resolve disputed issues with Regional Board

1 staff, Petitioners may be without an adequate remedy unless the State Board grants this petition for
2 review and a hearing with respect to the issues presented herein.

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4 DATED: September 23, 2009 Respectfully submitted,

5 **ALSTON & BIRD LLP**

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8 Peter A. Nyquist
Megan K. Hey

9 Attorneys for Petitioners

10 THE DOW CHEMICAL COMPANY, ROHM AND
11 HAAS COMPANY, and MORTON INTERNATIONAL,
12 INC.



California Regional Water Quality Control Board Los Angeles Region



Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

Linda S. Adams
Agency Secretary

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

August 24, 2009

Mr. Kenneth A. Walanski, P.E.
Dow Chemical Company
123 North Wacker Drive
Chicago, IL 60606-1743

**REQUIREMENT FOR SOIL, SOIL VAPOR AND GROUNDWATER ASSESSMENT
AND GROUNDWATER MONITORING PURSUANT TO CALIFORNIA WATER CODE
SECTION 13267 – FORMER BEE CHEMICAL COMPANY FACILITY, 1500 W. 178TH
ST., GARDENA, CA (SITE CLEANUP PROGRAM NO. 0550, SITE ID NO. 1843600)**

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the public agency with primary responsibility for the protection of ground and surface water quality for all beneficial uses within major portions of Los Angeles and Ventura County, including the above-referenced site (Site). Past assessment, monitoring, and remedial activities performed in soil and groundwater at the Site were found insufficient by Regional Board staff, with contaminants of concern having not been removed to the required concentrations.

Subsequently, you have not completed site contamination characterization and monitoring to demonstrate the full extent of impacts to the subsurface from volatile organic compounds (VOC). Enclosed is a Regional Board Order requiring, pursuant to California Water Code (CWC) section 13267, that Dow Chemical Company completes assessment of all contaminants of concern in soil, soil vapor and groundwater, and continue groundwater monitoring activities at the Site.

The State Water Resources Control Board (State Water Board) adopted regulations requiring the electronic submittals of information over the internet using the State Water Board GeoTracker data management system. You are required not only to submit hard copy reports required in this Order but also to comply by uploading all reports and correspondence prepared to date on to the GeoTracker data management system. The text of the regulations can be found at the URL: http://www.waterboards.ca.gov/ust/cleanup/electronic_reporting/docs/final_electronic_regs_dec04.pdf.

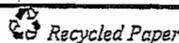
If you have any questions, please contact me at (213) 576-6740 or rehe@waterboards.ca.gov.

Sincerely,

Robert Ehe, P.E.
Water Resources Control Engineer
Site Cleanup Unit IV

Enclosure

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.



California Regional Water Quality Control Board

Los Angeles Region



Recipient of the 2001 Environmental Leadership Award from Keep California Beautiful

Linda S. Adams
Agency Secretary

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Arnold Schwarzenegger
Governor

REQUIREMENT TO PROVIDE TECHNICAL REPORTS FOR SOIL, SOIL VAPOR AND GROUNDWATER ASSESSMENT AND FOR GROUNDWATER MONITORING (CALIFORNIA WATER CODE SECTION 13267 ORDER)

FORMER BEE CHEMICAL COMPANY FACILITY
1500 W. 178TH STREET, GARDENA, CALIFORNIA
(SITE CLEANUP PROGRAM NO. 0550, SITE ID NO. 1843600)

You are legally obligated to respond to this Order. Please read this carefully.

You are the responsible party identified for soil and groundwater investigation at the referenced site (Site). Due to historical use of halogenated solvents at the Site, soil and groundwater beneath the Site have been impacted with volatile organic compounds (VOCs) including benzene, toluene, ethylbenzene, and xylenes (BTEX), also trichloroethene (TCE), also with hydrocarbons. The Regional Board requires the technical information to complete our evaluation of groundwater impacts beneath the Site. In order to provide the information, you are required to submit a work plan to the Regional Board to complete site contamination characterization and provide an adequate conceptual site model.

Pursuant to section 13267(b) of the California Water Code (CWC), you are hereby directed to submit the following:

- By **October 15, 2009**, a work plan which proposes to complete characterization beneath the Site of all contaminants of concern in soil, soil-vapor, and groundwater. This work plan shall provide an adequate site background and description of the current site conditions and site usage including the use of any potential contaminants of concern. The work plan shall propose replacement of groundwater monitoring wells at the Site. The former groundwater monitoring wells at the Site having been removed without the consent of the Regional Board.
- By **December 30, 2009**, a technical report providing the results of the field work proposed in the work plan, well construction data for each well with well survey data, well gauging data, conceptual site model depicting site-specific hydro-geological conditions, source(s), lateral and vertical extent of contaminants, pathways for contaminant migration based on field and analytical data collected from site investigation from your property and its vicinities. The technical report must include a recommendation and supplementary work plan if the proposed field work does not demonstrate a non-detect level delineation of the identified contaminants of concern in soil, soil-vapor, and groundwater.

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

- You are required to continue the quarterly groundwater monitoring and sampling program at the Site. The quarterly groundwater monitoring report must be submitted by the thirtieth day following the end of the quarter, as shown in the following schedule with the first report due on January 15, 2010:

<u>Report Period</u>	<u>Report Due Date</u>
January – March	April 15th
April – June	July 15th
July – September	October 15th
October – December	January 15th

Pursuant to section 13268(b)(1) of the CWC, failure to submit the required work plan, technical or monitoring report by the above due dates may result in the imposition of civil liability penalties by the Regional Board, without further warning, of up to \$1,000 per day for each day the report is not received after the above due dates.

We believe that the burdens, including costs, which are necessary to do the reports, bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. If you disagree and have information about the burdens, including costs, of complying with these requirements, provide such information to Mr. Robert Ehe within ten days of the date of this letter so that we may reconsider the requirements.

Any person aggrieved by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

SO ORDERED.



Tracy J. Egoscue
Executive Officer

August 24, 2009

California Environmental Protection Agency

